

lib.

BEFORE THE SHORELINES HEARINGS BOARD
STATE OF WASHINGTON

PUGET SOUND MUSSELS, INC.

Appellant,

and

STATE OF WASHINGTON, DEPARTMENT
OF NATURAL RESOURCES,

Intervenor-Appellant,

v.

KITSAP COUNTY,

Respondent.

SHB No. 90-59

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER

THIS MATTER, an appeal from a denial of an application for a Shorelines Substantial Development Permit for a shellfish aquaculture float by Kitsap County, came before the Shorelines Hearings Board beginning Wednesday, September 25, 1991, before Board Members, Harold S. Zimmerman, Chairman, Judith A. Bendor, Presiding Officer Annette S. McGee, Nancy Burnett, Dick Gidley and Dave Wolfenbarger. Administrative Appeals Judge William A. Harrison, presided.

The appellant, PUGET SOUND MUSSELS, INC., appeared in person through David Whitney and Gretchen Whitney, and were represented by Patricia K. Schafer of Gordon, Thomas, Honeywell, Malanca, Peterson & Daheim. The respondent Kitsap County, was represented by M. Peter Philley, Deputy Prosecuting Attorney for Kitsap County. The intervenor-appellant, the State of Washington, Department of Natural

Resources, was represented by Fronda Woods, Assistant Attorney General.

Having heard the testimony, having examined the exhibits, having considered the parties' contentions and arguments, and being fully advised, the SHORELINES HEARINGS BOARD, through its Administrative Appeals Judge issued an oral decision on October 8, 1991. Based on that oral decision, the SHORELINES HEARINGS BOARD makes the following

FINDINGS OF FACT

1. This matter arises out of the denial by Kitsap County of an application by the appellant for a Shorelines Substantial Development Permit for the construction and operation of a shellfish aquaculture float. The 40'x40' float is proposed to be situated on a one acre subtidal parcel of land leased from the State of Washington Department of Natural Resources. The float would be attached by an anchoring system, with concrete anchors and anchor cables, all of which will be situated outside areas identified as containing eel grass. The float itself will be painted in shades of gray/blue or gray/green to blend with the environment and have an overall height above the surface water no higher than sixteen (16) inches. The float will hold 20-foot culture lines suspended with 10-pound weights. The facility will be monitored by boat from the Seabeck Marina. It has been estimated that the operation will involve being on site approximately five (5) hours per day, two (2) days per week, with an additional 250 hours during the harvest season. The culture lines will be hand-hauled. A

1 description of the maintenance and operation of this aquaculture
2 facility is more fully described in Exhibit R5.

3 2. The one-acre site is located offshore from Miami Beach in
4 Hood Canal, a Shoreline of Statewide Significance. The float itself
5 is proposed to be located 775 feet from the Miami Beach shoreline,
6 measured from the low-bank area, and approximately 1,265 feet from the
7 high-bank area, to the Southeast.

8 3. The proposal is unlikely to have any significant impact upon
9 eel grass, herring spawning, sea mammals, crab, shrimp, clams,
10 oysters, or red tide.

11 4. The proposal itself will not be significantly affected by red
12 tide, provided that the usual precautions are taken.

13 5. The proposal will not be significantly affected by winter
14 storms, provided that it is designed to weather a 100-year storm.

15 6. Fishing was not shown as being concentrated at or near the
16 site. The proposal is unlikely to interfere significantly with
17 fishing, either sport or commercial.

18 7. The small float, 40'x 40', is located within a passage which
19 is some 6,000 yards wide. The proposal is unlikely to affect access
20 to or from the public boat launching ramp which is some 750 feet from
21 the proposed float. A navigation light on the proposed float is
22 unlikely to be obtrusive to those on shore, yet will safely warn
23 boaters. The proposal is unlikely to interfere with recreational or
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1 other navigation.

2 8. Overall, the proposal is an unobtrusive part of a panoramic
3 view from the shore

4 9. Any finding of fact should be deemed a conclusion of law and
5 is hereby adopted as such.

6 From these findings, the SHORELINES HEARINGS BOARD makes the
7 following

8 CONCLUSIONS OF LAW

9 1. The Board has jurisdiction over the persons and over the
10 subject matter of this proceeding.

11 2. This Board reviews the proposed development for consistency
12 with the Kitsap County Shoreline Management Master Program and the
13 Shoreline Management Act, specifically, RCW 90.58.140(2)(b).

14 3. The proposal is consistent with the Rural Environment
15 Designation of the site under the Kitsap County Shoreline Management
16 Master Program. Aquaculture is a permitted use in the Rural
17 Environment. This aquaculture facility is further consistent with
18 that designation in that the use by people is not an intensive
19 development and will result only in a light modification of the
20 natural characteristics of the site.

21 4. The proposal is consistent with the aquaculture use policies
22 of the Kitsap County Master Program.

23 5. The proposal is located so as to provide reasonable
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1 navigation access to waterfront property owners.

2 6. The proposal minimizes interference with surface navigation.

3 7. The proposal is not within, nor will it adversely affect, the
4 eel grass which has been found to exist in the area and is, therefore,
5 not within a "natural system" as that term is used in the Kitsap
6 County Shoreline Management Master Program.

7 8. The proposal is located in Hood Canal, a Shoreline of
8 Statewide Significance, and is therefore subject to the criteria for
9 Shorelines of Statewide Significance.

10 9. The proposal is consistent with the criteria set forth for
11 Shorelines of Statewide Significance.

12 10. The proposal recognizes and protects a statewide interest.
13 In RCW 15.85.010, the State Legislature has declared that aquatic
14 farming provides a consistent source of quality food, offers
15 opportunities of new jobs, increases farming income, and improves the
16 balance of trade and, from that declaration, has declared that it is a
17 policy of the State of Washington to encourage the development and
18 expansion of aquaculture within the State. This proposed project does
19 not cause any significant adverse effect upon statewide or local
20 interest.

21 12. WAC 173-16-060 which implements the Shoreline Management Act
22 states that aquaculture is of statewide and national interest, and is,
23 therefore, a preferred water dependent use.

1 13. WAC 332-30-161, implementing the public aquatic lands lease
2 legislation, further declares that aquaculture is an aquatic land use
3 of statewide value.

4 14. The proposal is not an intensive development and minimizes
5 human intrusion and, therefore, is consistent with the criteria of
6 Shorelines of Statewide Significance which state the natural character
7 of the shoreline should be preserved.

8 15. The proposal will neither detrimentally alter the natural
9 conditions characteristic of the shoreline, nor result in a costly
10 impairment to the natural environment, and yet promotes aesthetic
11 considerations by its unobtrusiveness and therefore meets the criteria
12 for Shorelines of Statewide Significance which require that the
13 proposal result in long-term over short-term benefit.

14 17. The proposal protects the resources and ecology of the
15 State. It leaves undeveloped those areas such as eel grass beds and
16 herring spawning areas which contain a unique and fragile resource.

17 18. There are public access and recreational facilities in the
18 immediate area. This proposal will not significantly affect those or
19 other forms of public recreation. Therefore, the proposal meets the
20 criteria relating to public access and recreation set forth for
21 Shorelines of Statewide Significance.

22 19. Any conclusion of law which should be deemed a finding of
23 fact is hereby adopted as such.

24 From these conclusions of law, the Board enters the following
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1 ORDER

2 The action of Kitsap County denying a Shoreline Substantial
3 Development Permit to PUGET SOUND MUSSELS, INC. is reversed. This
4 matter is remanded to Kitsap County for issuance of the Shoreline
5 Substantial Development Permit, subject to the conditions that prior
6 to construction, the project's design be first approved by a
7 professional engineer, who will declare that the project is able to
8 withstand a 100 year storm event.

9 DATED this 18th day of November, 1991.

10 SHORELINES HEARINGS BOARD

11 Annette S. McGee
12 ANNETTE S. MCGEE, Presiding Officer

13 Judith A. Bendor
14 JUDITH A. BENDOR, Member

15 Harold S. Zimmerman
16 HAROLD S. ZIMMERMAN, Chairman

17 Nancy Burnett
18 NANCY BURNETT, Member

19 Dick Gidley
20 DICK GIDLEY, Member

21 Dave Wolfenbarger
22 DAVE WOLFENBARGER, Member

23 William A. Harrison
24 WILLIAM A. HARRISON
25 ADMINISTRATIVE APPEALS JUDGE

26 FINAL FINDINGS OF FACT,
27 CONCLUSIONS OF LAW,
AND ORDER - (7)

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BEFORE THE SHORELINES HEARINGS BOARD
STATE OF WASHINGTON

PUGET SOUND MUSSELLS, INC.

Appellants,

and

STATE OF WASHINGTON, DEPARTMENT
OF NATURAL RESOURCES,

Intervenor-Appellant,

v.

KITSAP COUNTY,

Respondent.

SHB No. 90-59

ORDER GRANTING
PARTIAL SUMMARY JUDGMENT

This matter came before the Shorelines Hearings Board on December 3, 1990. It is a Motion for Partial Summary Judgment by Patricia K. Schafer, Attorney for Puget Sound Mussels, Inc.

A stipulation by all parties was entered to waive oral argument of the matter, and for the Board to determine the matter based on the written file alone.

Members of the Shorelines Hearings Board, Annette S. McGee, Presiding; Chair, Judith A. Bendor; Harold S. Zimmerman; Nancy Burnett; Richard Gidley; and David Wolfenbarger reviewed and considered the motion, response, and reply, along with all documents submitted.

ORDER GRANTING
PARTIAL SUMMARY JUDGMENT
SHB No. 90-59

1 State Department of Natural Resources was granted.

2 A final stipulated Pre-Hearing Order was issued on October 24,
3 1990.

4 IV

5 The following documents were filed and considered:

6 A. Motion for Partial Summary Judgment by the appellant on
7 November 9, 1990:

8 "that the commercial development policies of Kitsap
9 County Master Program are inapplicable to this project,
10 and that, therefore, a Conditional Use Permit is not
required."

11 The above motion was filed together with the following:

- 12 a. An Affidavit of David H. Whitney, dated November 7, 1990;
13 b. An Affidavit of John E. Woodring, dated November 2, 1990;
14 c. Final Findings of Fact, Conclusions of Law and Order in SHB
15 86-22, Mark Holland v. Kitsap County & Yukon Harbor Concerned
16 Citizens, dated July 7, 1989.
17 d. Petition for Review in Superior Court of Washington for
18 Kitsap County, No. 87-2-01041-6, Kitsap County v. Mark
19 Holland, dated July 28, 1987.
20 e. Kitsap County's Opening Brief in Kitsap County Superior
21 Court, No. 87-2-00141-6, Kitsap County & Yukon Harbor
22 Concerned Citizens v. Mark Holland Puget Sound Aquaculture,
23 dated April 11, 1988;
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- 1 f. Yukon Harbor Concerned Citizens' Opening Brief in Kitsap
2 Superior Court, No. 87-2-01041-6, Kitsap County & Yukon
3 Harbor Concerned Citizens v. Mark Holland Puget Sound
4 Aquaculture, dated April 27, 1988; and
5 g. Appellant's Memorandum, dated November 6, 1990.

6 B. Respondent Kitsap County's Response Memorandum to the Motion for
7 Partial Summary Judgment, by Kitsap County Deputy Prosecutor M. Peter
8 Philley, together with the following:

- 9 a. Kitsap County Shoreline Management Master Program, dated July
10 11, 1977;

11 C. Reply Memordandum by Patricia Schafer, Attorney for Puget Sound
12 Mussels, Inc., dated November 27, 1990, together with:

- 13 a. Affidavit of Patricia K. Schafer, dated November 26, 1990;
14 b. Letter dated March 16, 1990, to Renee Beam from David
15 Whitney, Puget Sound Mussels, Inc.;
16 c. Shoreline Substantial Development Application of Puget Sound
17 Mussels' Affidavit of Publication, dated April 9, 1990;
18 d. Letter dated April 13, 1990, to Renee Beam from David Whitney;
19 e. Letter dated April 30, 1990, to David Whitney from Renee Beam;
20 f. Letter May 3, 1990, to Renee Beam from David Whitney;
21 g. Letter dated July 3, 1990, to adjacent property owners from
22 Renee Beam and list of adjacent property owners;
23 h. Memorandum to Kitsap County Commissioners dated July 25,
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1 1990, from Kitsap Department of Community Development;

- 2 i. Letter dated August 1, 1990, to Kitsap County Commissioners
3 from David Whitney.

4 V

5 Any Conclusion of Law deemed to be a Finding of Fact is hereby
6 adopted as such. From these Findings of Fact, the Board makes this:

7 CONCLUSION OF LAW

8 Having reviewed and considered the above, the Shorelines Hearings
9 Board concludes that the Commercial Development Use Activity Section
10 in the Kitsap County Shoreline Management Master Program is
11 inapplicable, as a matter of law to the proposal. The proposal is
12 governed by the more specific Aquaculture Use Activity Section, Part
13 7, II, pages 7-5 and 7-6. Mark Holland, d/b/a Puget Sound Aquaculture
14 v. Kitsap County, SHB 86-22 (attached).

ORDER

Therefore, the appellant's motion on Legal Issue B is GRANTED and the issue DISMISSED. Consequently, since a Shoreline Conditional Use Permit is not required, appellant's motion on Legal Issue C is GRANTED and the issue DISMISSED.

DONE this 4th day of January, 1991.

SHORELINES HEARINGS BOARD

Annette S. McGee
ANNETTE S. MCGEE, Member

Judith A. Bendor
JUDITH A. BENDOR, Chair

Harold S. Zimmerman
HAROLD S. ZIMMERMAN, Member

Nancy Burnett
NANCY BURNETT, Member

Richard Gidley by A.McGee
RICHARD GIDLEY, Member

David Wolfenbarger by A.McGee
DAVID WOLFENBARGER, Member